TH FLOOR
V
688
U53
000
.2

GEORGETOWN UNIVERSITY LAW LIBRARY
3 0700 00688941 3

Multicultural Implications of Restorative Justice:

Potential Pitfalls and Dangers

0720-B
J 34.2:M91
SEP 21 2000
DS 93 A

April 2000

Center for Restorative Justice & Peacemaking
University of Minnesota

Office for Victims of Crime
OVC
Advocating for the Fair Treatment of Crime Victims

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street NW.
Washington, DC 20531

Janet Reno
Attorney General

Daniel Marcus
Acting Associate Attorney General

Mary Lou Leary
Acting Assistant Attorney General

Kathryn M. Turman
Director, Office for Victims of Crime

Office of Justice Programs
World Wide Web Home Page
www.ojp.usdoj.gov

Office for Victims of Crime
World Wide Web Home Page
www.ojp.usdoj.gov/ovc

For grant and funding information contact
U.S. Department of Justice Response Center
1–800–421–6770

OVC Resource Center
1–800–627–6872
OVC Resource Center Home Page
www.ncjrs.org

NCJ 176348

This document was prepared by the Center for Restorative Justice & Peacemaking (formerly the Center for Restorative Justice & Mediation) under grant number 96–VF–GX–K006, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

Multicultural Implications of Restorative Justice:

GEORGETOWN UNIVERSITY
LAW LIBRARY

Potential Pitfalls and Dangers

Mark S. Umbreit, Ph.D., Director
Robert B. Coates, Ph.D., Senior Research Associate
Center for Restorative Justice & Peacemaking
(formerly Center for Restorative Justice & Mediation)
School of Social Work
University of Minnesota
St. Paul, Minnesota

April 2000

Office for Victims of Crime
OVC
Advocating for the Fair Treatment of Crime Victims

NCJ 176348

over images © 2000 PhotoDisc, Inc.

Message From the Director

This collection of six documents covers a number of important issues related to restorative justice. Four of the documents focus on victim-offender mediation, which is a major programmatic intervention that fully embraces the concepts of restorative justice. The first of these documents is the *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue*, which assists administrators in developing or enhancing their restorative justice programs. It provides practical guidance for mediators to facilitate balanced and fair mediation, which will ensure the safety and integrity of all the participants. The *National Survey of Victim-Offender Mediation Programs in the United States* contains information about the characteristics of the various victim-offender mediation programs operating nationwide and the major issues facing them in their day-to-day operations. The *Survey* describes the actual functioning of the programs, while the *Guidelines* sets standards for the practice of victim-offender mediation. Next, the *Directory of Victim-Offender Mediation Programs in the United States* lists all identified victim-offender mediation programs in the country and provides their addresses, phone numbers, and contact and other basic information. The purpose of the *Directory* is to provide easy access for persons who would like to contact a given program. The *Family Group Conferencing: Implications for Crime Victims* document discusses a related form of restorative justice dialogue that originated in New Zealand and Australia and has been replicated in some communities in the United States. The *Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers* document informs practitioners about concerns regarding the implementation of such frameworks when working with persons of cross-cultural perspectives. The sixth document, entitled *Victim-Offender Mediation and Dialogue in Crimes of Severe Violence,* will be added to the collection late FY 2000. It will provide case study evidence suggesting that many of the principles of restorative justice can be applied to crimes of severe violence, including murder. In addition, this document includes a discussion about the need for advanced training for persons working with victims of severe violence.

The Office for Victims of Crime does not insist that every victim participate in victim-offender mediation, family group conferencing, or other restorative justice intervention. Such participation is a personal decision that each victim must make for herself or himself. We strongly advocate, however, that all restorative justice programs be extremely sensitive to the needs and concerns of the victims who would like to meet with their offenders. No pressure should be placed on victims to participate, for participation must be strictly voluntary. Victims should be granted a choice in the location, timing, and structure of the session and a right to end their participation at any stage in the process. These protections for victims do not mean that offenders can be treated insensitively. Both victim and offender must be dealt with respectfully.

We sincerely hope that restorative justice programs already in operation in probation or parole agencies, judicial agencies, religious groups, victim service organizations, community-based organizations, or elsewhere study these documents and embrace the victim-sensitive

guidelines that are relevant to their particular type of intervention. Restorative justice programs can only be strengthened by operating with heightened awareness of the needs of crime victims.

Kathryn M. Turman
Director
Office for Victims of Crime

Acknowledgments

The Office for Victims of Crime (OVC) would like to offer special thanks to authors Mark S. Umbreit, Ph.D., Director, and Robert B. Coates, Ph.D., Senior Research Associate, of the Center for Restorative Justice & Peacemaking (formerly the Center for Restorative Justice & Mediation), School of Social Work, University of Minnesota. We would also like to acknowledge the valuable contributions of review, consultation, and commentary made by Ada Pecos-Melton, President, American Indian Development Associates of Albuquerque, New Mexico, and Oliver Williams, Ph.D, Director, Institute on Domestic Violence in the African American Community, University of Minnesota. Also, we would like to acknowledge the valuable contribution made by Robert Schug, Administrative Aide at the Center for Restorative Justice & Peacemaking, who spent many hours preparing the document and responding to numerous requests for draft copies.

This project also benefited greatly from the contributions, guidance, and support of Susan Laurence, the Project Manager at OVC. This *Restorative Justice and Mediation Collection* is the result of the efforts of many individuals in the field who generously shared their materials and experiences with the Center for Restorative Justice & Peacemaking so that victims may be provided additional options in the process of healing.

Contents

I. Introduction 1

II. Restorative Justice: Scope and Framework 3

III. Restorative Justice: Program Adaptations 5

IV. Potential Cross-Cultural Pitfalls and Dangers 7

Differences in Communication Styles 7

Differences Among Cultures 9

Differences Within Cultures 9

Racism as a Subset of Cultural Conflict 10

V. Ways To Increase Positive Interaction 13

Cultural Skills for the Restorative Justice Practitioner 13

Know Thyself 13

Get To Know the Participants 14

Prepare the Participants 16

VI. Conclusion 19

Appendix A. The Case of a Community Reparation Board Meeting 21

Appendix B. Diversity 25

Bibliography 27

I. Introduction

"The hell you say. I won't stand for it." Banging the table with his fist, the Black store owner shouted, "You're not gonna get off that easy!" The teenaged American-Indian shoplifter cowered in silence. She worked hard to keep her lips from trembling, and her stare fixed on an old picture hanging on the wall. With a churning stomach, the White mediator worried that the entire mediation had been torpedoed by the store owner's angry outburst. The mediator tried to think of a way to end the session with some semblance of civility. Frustrated, the store owner looked with disgust at the other two participants at the table. He wanted and expected a response, but the other two individuals sat motionless. The store owner asked himself, "How can justice ever come out of this situation?"[1]

This document examines concerns practitioners of restorative justice must keep in mind when working with people from different cultures. Efforts to address these concerns must deal with challenges full of potential dangers and pitfalls. People from different cultures have different ways of speaking and behaving. In addition, a person's cultural milieu determines his or her world view, perception of justice, and communication style (Myers and Filner, 1993). These differences make the world interesting, but they can also cause difficulties. Even when all parties come to the table with the best intentions, natural cultural differences among cross-cultural parties can easily lead to misunderstanding, destroy the best efforts at conflict resolution, and end the hopes of restoring and repairing relationships.

The following section provides a brief overview of the restorative justice concept and a cursory glance at some programs that attempt to apply restorative justice principles. Discussions of program models that apply restorative justice principles are then presented. Next, the pitfalls and dangers that may hamper restorative justice efforts within cross-cultural contexts are identified. Finally, ways to increase positive interactions when working with persons from different cultural backgrounds are presented. Practitioners who attempt to adapt restorative justice principles to their work must be sensitive to cross-cultural differences and encourage those with whom they work to be sensitive as well.

[1] This scenario is fictional and intended to be illustrative. Many terms are used in the United States to refer to various ethnic groups. Throughout this document, major ethnic groups are referred to as White, Black, American Indian, Latino, and Asian despite that individuals might prefer other terms.

II. Restorative Justice: Scope and Framework

Restorative justice has been described in such far-reaching terms as "a revolution in criminal justice" (National Institute of Corrections, quoted by Zehr, 1997); "heal[ing] and put[ting] right the wrongs" (Zehr and Mika, 1997); "fueled by commitment and passion not unlike that of a revival meeting" (Bazemore and Pranis, 1997); "an entirely new framework for understanding and responding to crime and victimization within American society" (Umbreit, 1997b); and "a paradigm shift" (Van Ness, 1997).

The phrase "restorative justice" implies both process and outcome. It does not indicate a particular program, although programs and practices may be classified by the extent to which they advance restorative justice concepts.

Six principles shape the framework of restorative justice: the nature of crime, the goal of justice, the role of victims, the role of offenders, the role of the local community, and the role of the formal criminal/juvenile justice system.

The nature of crime. Crime is a human process whereby humans violate both personal relationships and social relationships implied as a consequence of being part of a community. Crime is not merely an act of breaking laws of the State; it is a tearing of the social or community fabric. Crime is the violation of one human being by another.

The goal of justice. The proper goal of justice is to repair the damage done and restore relationships, both personal and communal, to their original state to the extent possible.

The role of victims. Restoration for victims of crime can happen only if they have the opportunity to choose involvement in a justice process that meets their need for validation as individuals who have been hurt. Victim involvement may include receipt of information, dialogue with the offender, resolution of conflict with the offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, resolving the experience, and renewal of hope.

The role of offenders. Restoration for offenders who commit criminal or delinquent acts can happen if they have the opportunity to accept their responsibilities and obligations toward individual victims and the community as a whole. Such opportunity may include defining their obligations, participating in safe, mediated face-to-face encounters with victims, understanding the impact of their own actions, providing restitution in creative ways, identifying their needs, having partial ownership of the process, resolving the conflict, and renewing hope.

The role of the local community. Restoration for the local community can happen if its resources are brought to bear on the needs of victims and offenders as well as in prevention of delinquent and criminal acts.

The role of the formal criminal/juvenile justice system. Restoration for the formal criminal/juvenile justice system can happen if it continues to work to ensure victim and offender involvement that genuinely engages all participants without coercion. As it seeks to promote justice in the community, this system must continue to monitor accountability, exhausting the least restrictive interventions for offenders before moving toward incarceration alternatives.

III. Restorative Justice: Program Adaptations

Program models that reflect restorative justice principles to varying degrees include community reparation boards, family group conferences, circle sentencing, and victim-offender mediation (VOM) (Bazemore and Griffiths, 1997). There are many others, but these types are the most frequently used today.

Community reparation boards, as practiced in Vermont, encourage victim involvement, but the extent of victim participation varies considerably. Community reparation boards in the Vermont Reparative Probation Program are responsible for monitoring contract compliance, whether offenders and victims have worked out mutually acceptable restitution agreements or whether an agreement has been established by the board or some other judicially empowered authority. These boards often refer victims and offenders to mediation, although such referrals are not mandatory.

Family group conferences, developed in Australia and New Zealand and replicated elsewhere, focus heavily on the needs of the offender by shaming the offender and reintegrating him or her back into the community. While some importance is assigned to meeting with victims—not necessarily the specific victims of the offender's actions—and representatives of the larger community, the emphasis is on educating the offender. The more the victim perspective is developed as a counterbalance to retributive justice by giving attention to reparation, empowerment, and support, the more family group conferencing fits into the restorative justice framework.

Circle sentencing places considerable emphasis on victim needs. The impetus for the program comes from the community. Victims, representatives of the community, and elders meet with the offender. Victims are encouraged to tell their stories to their neighbors, who are present in the circle. Offenders are present and may also have friends and relatives present. The goal of the process is to develop consensus on an appropriate sentencing plan that addresses the concerns of all parties. Maintaining a balance between the needs of both victim and offender is a continuing struggle.

Victim-offender mediation strives to balance the needs of victims and offenders and is practiced in a variety of ways in many States, provinces, and countries. In VOM programs, the victim meets with the offender after the program's staff has completed preparatory work with each participant. Sharing the stories of the victim's and offender's experiences and working out ways for the offender to repair damages to the victim and the community are emphasized.

Each program, along with many others, pursues restorative justice frameworks in real-world settings. Although the implementation of restorative justice principles has made a considerable impact on the criminal justice process, much more needs to be done to change the system's emphasis from retributive to restorative. Legal, procedural, and attitudinal constraints of the existing formal justice system, expectations of key participants, and inertia in the face of change inhibit progress.

IV. Potential Cross-Cultural Pitfalls and Dangers

The key to progress toward adaptation of restorative justice frameworks is increased sensitivity to cross-cultural issues and dynamics that affect restorative justice programs and the administration of justice itself. Often the cultural backgrounds of victim, offender, and program staff member are different, and these differences can lead to miscommunication, misunderstandings, or, worse, revictimization of the victim.

This document's opening scenario demonstrates a brief exchange between people of different cultural backgrounds that left each participant feeling misunderstood, dissatisfied, and doubtful of the mediation's efforts to "humanize" the justice system.

A great danger when speaking of cross-cultural aspects is overgeneralization. There are as many differences within cultures as between cultures. For example, significant customs, communication styles, and world views distinguish the rural White from the urban White, the upper-class Black from the lower-class Black, the Mexican Latino from the Puerto Rican Latino, the reservation American Indian from the nonreservation American Indian. Differences within cultures are discussed later in this section, but first we consider variations across cultures.

Differences between persons raised and living in unlike cultural settings are often reflected in communication styles, typically in the way points of view are communicated; consider the potential pitfalls in interpreting another's nonverbal communication. The following section draws considerably from research-based findings reported by D.W. Sue and D. Sue in *Counseling the Culturally Different* (1990).

Differences in Communication Styles

Proximity. Cultural experience may dictate how close to each other people stand when they converse. Generally, Latin Americans, Africans, Black Americans, Indonesians, Arabs, South Americans, and the French are more comfortable speaking with less distance between them than White Americans. In mediation or conversation, the White staff person is often seen backing away, possibly feeling confronted or attacked. The Latino victim will appear to be chasing the White American mediator across the room, believing the mediator to be aloof or thinking, "He believes he's too good for me." Both participants are misreading cues based on their cultural experiences and taking actions that will only reinforce misunderstandings. Another example of distance preference is the desire by many White Americans to keep a desk or table between themselves and the people they are talking to. In contrast, some Eskimos prefer sitting side by side when talking of intimate matters to sitting across from each other.

Body movements. Body movements often speak louder than words. Posture, smiling, eye contact, laughing, gestures, and many other movements communicate. How these nonverbal signals are interpreted may vary greatly from culture to culture. Asians may be puzzled and offended by a White mediator who wants to express herself with facial grimaces and smiles. The White mediator may conclude that the Asian, who has been taught to tightly control expressing his feelings, has no emotion. Thus, an individual

raised to value control of emotions may not shed tears for having burgled a home but may be feeling remorse.

How many times have mental health professionals interpreted failure to make eye contact to mean avoidance of an issue, poor self-confidence, submissiveness, or guilt and shame? In many traditional American-Indian cultures it is disrespectful to look an elder in the eye. In the classroom, American-Indian students often fail to look at the professor when speaking; many prefer not to speak at all. Blacks make more frequent eye contact when speaking than when listening, which leads some practitioners to describe their Black clients as resistant or disinterested. Whites, on the other hand, tend to make eye contact more when listening than when speaking. It is not difficult to conclude that these variations in making eye contact may contribute to misunderstandings during mediation.

Paralanguage. Paralanguage or other vocal cues, such as hesitations, inflections, silences, volume or timbre of voice, and pace of speaking, also provide ample opportunities for misinterpretation across cultures. Rural Americans tend to talk at a slower pace than their urban counterparts. Put a Northern Minnesota farmer in the same room with a New York City taxicab driver and they may have difficulty having a conversation, not because they do not share common interests or are not curious about each other but because they do not have the patience to work at communicating. The New Yorker could feel that an eternity had gone by before the Minnesotan had completed a thought. The latter would have difficulty listening to the fast-paced patter of the former.

In American-Indian culture, silence is valued as sacred. Each person must have the opportunity to reflect, to translate thoughts into words, and to shape the words not only before taking a turn at speaking, but while speaking. White Americans often feel uncomfortable with silence. The French might regard silence as a sign of agreement. To an Asian, silence may be considered a token of respect or politeness.

Related somewhat to pace and silence is hesitation. For persons who speak rapidly and feel uncomfortable with silence, hesitation on the part of another is a cue to begin speaking. To the one who hesitates, such an action might be taken not as an interruption but as an intentional, grievous insult.

Asians are given to speaking softly; many find U.S. speakers to be brash and loud. Arabs, on the other hand, may find U.S. speakers to be soft-spoken. The Arab prefers a higher volume.

Persons of Asian descent may find U.S. Americans to be too direct, blunt, and frank. The former will go to great lengths not to hurt feelings; the latter is often unaware when feelings have been hurt.

Density of language. Density of language also differs among speakers from different cultural backgrounds. Blacks tend to be sparse and concise. Often, in exchanges among Blacks, many shared codes are used, requiring little further information. Even the simple phrase "uh, huh" is loaded with meaning when taken in the context of the social situation. To outsiders, Blacks may appear terse or disinterested. Asians and American Indians will often use many more words to say the same thing as their White colleagues. The poetry of the story may be more important than the content (and may actually be the point of the story). Much patience is required of Blacks and Whites to understand what is being said when conversing with American Indians or Asians. One can readily see potential communication problems that might arise

in mediations involving members of different cultural groups.

Looking at these communication styles through a somewhat different lens, Sue and Sue (1990) regard American-Indian, Asian-American, and Hispanic manners of expression to be understated and indirect; the manner of Whites is considered objective and task-oriented; Blacks' manners are regarded as affective, emotional, and interpersonal. Blacks will interrupt or take a turn at speaking when they can. Whites will nod to indicate listening or agreement. American Indians and Asians seldom provide cues to encourage the speaker; they listen without significant nonverbal engagement.

Differences Among Cultures

In addition to the potential pitfalls based on different communication styles, other factors based on cultural differences cast a shadow over attempts to build restorative justice programs. For example, the dominant U.S. White culture may emphasize individualism, competition, taking action, rational linear thinking, and "Christian principles and a Protestant work ethic," but these are not values shared by all Whites, let alone persons of other cultures. Asians, Hispanics, and American Indians are likely to place more emphasis on the community fabric and kinship networks than on the place of the individual. American Indians further cherish the place of the individual within the context of the entire natural world, without which the individual has no value.

Persons from religious perspectives other than Christianity, which emphasizes "individual salvation," may see the individual as equal to all living things, as on a journey toward individual fulfillment, or even as insignificant in the total scheme of existence.

This is not to suggest that any one world view is the correct one. It is simply noting that differing world views often clash (too often literally in the case of wars) and may threaten to undermine attempts at repairing wrongs caused by crime.

Perhaps, broader than the scope of this work, it might be worthwhile to consider how the concept of justice varies across cultures. In traditional American-Indian culture, not only is the personal relationship damaged by criminal behavior but also the communal or tribal relationship, and likely even the relationship of the individual to the universe, is damaged, for violations within the tribal context may be regarded as a ripping of the fabric that holds everything together. How can restoration of justice be promoted without knowing how the various participants within a given conflict understand and value justice?

Differences Within Cultures

As noted above, significant dangers involved in discussing cross-cultural differences are overgeneralizing cultural differences and overlooking intracultural differences. It is important to recognize that subcultures exist within larger cultures. Some cultural characteristics may be shared by most Whites, yet Whites raised in poor, rural Appalachia may have different values, mannerisms, and communication patterns than Whites raised in San Francisco. Likewise, middle- and upper-class Blacks of Los Angeles will share certain characteristics with Blacks raised in the blighted areas of south Los Angeles, yet will vary considerably in values, mannerisms, and communication patterns. The same can be said of Asians raised in dense inner-city conclaves versus those who move to smalltown America, or of Utes raised on a reservation far from the urban world compared with Utes raised in the fast pace of a metropolis.

Race, socioeconomic status, ethnicity, gender, religion, sexual orientation, rural or urban residence, and many other defining characteristics shape how an individual views the world and his or her place in that world. These factors influence whether there is a propensity to blame the offender, the victim, or the community for crime and whether participants come to a "justice program" seeking revenge or repair, desiring to act or to be acted upon, or expecting hope or defeat.

Opportunities for restorative justice can only be enhanced when those who work in justice programs make the time and expend the energy to understand cultural differences and related communication problems.

Racism as a Subset of Cultural Conflict

While race and culture are intertwined, they are not one and the same. As indicated above, speech patterns, intensity of communication, interpretation of nonverbal cues, and many other nuances of interaction are influenced by the mix of race and culture. Although it would be a mistake, for example, to assume that Blacks from different social classes and different regions of the culture communicate and handle conflict in the same ways, the fact of being Black is likely a—if not the—key determining factor in how they perceive the world and how others perceive them.

The extent to which Blacks are aware of being overtly or covertly subjected to prejudice and discrimination because of the color of their skin influences their communication and efforts at conflict resolution with persons of other races. Previous experiences of individual or institutional racism affect the role Blacks play in any interaction: whether they are open or on guard, passive or aggressive.

The impact of racism is a potential contextual variable in restorative justice programs in which participants are of different races. Where there is an imbalance of political power associated with race, one may expect to find resources for schools, recreation, police, and so on to be weighted in favor of the group with the most political clout. In the United States, this often means that Whites have more resources, since representatives of their racial group are most often in positions of political power. It would be erroneous, however, to assume that there are not also consequences of racism felt in localities where, for example, Blacks have more political power than Hispanics, or Hispanics have more political power than American Indians, or Asians have more political power than Whites. Racism is not the prerogative of persons of only one skin color.

Staff, paid or volunteer, need to analyze closely their own behaviors to determine to what extent racism may be subtly apparent in their nonverbal behaviors or assumptions about the worlds of the victim and the offender. For example, do nonverbal actions such as folding one's arms, scooting a chair backward, or shuffling papers indicate discomfort and a desire to be somewhere else? Each of these behaviors may simply be an acceptable part of communication or they may be suggestive of prejudice. Do we assume that the American-Indian youth offender sitting before us comes from a broken family of alcoholics, is lazy, and has no goals? These descriptors may, in fact, describe a particular youth. But when they are assumed because of the youth's skin color, they represent a racist attitude. Actions taken based on those assumptions, such as withholding educational services because the youth is believed to

be lazy or failing to acknowledge the strengths of the existing family structure because "it's not normal," are signs of racial discrimination.

Program staff must not only examine their own beliefs and actions, but also be alert to the embedded racial biases of offenders and victims. Racism may be a justification used by the offender for committing the crime. Racism may influence why the victim wants not an "ounce of flesh" but a "pound of flesh." When racist assumptions or accusations are likely to occur between offender and victim, the mediator must act as an interpreter or a buffer during premeetings and during any face-to-face encounters, be they as part of mediation, community boards, or other restorative justice programs.

Although race cannot be equated with culture, it can be such a powerful determining factor of communication and interaction patterns that it should not be ignored when sorting out cultural differences.

V. Ways To Increase Positive Interaction

Cultural Skills for the Restorative Justice Practitioner

In their work *Counseling the Culturally Different,* Sue and Sue identify five characteristics of the culturally skilled counselor, all of which are necessary cultural skills for restorative justice practitioners (adapted from Sue and Sue, 1990, pp. 167–168):

- The culturally skilled restorative justice practitioner is one who has moved from being culturally unaware to being aware of and sensitive to his or her cultural heritage and to valuing and respecting differences in culture.
- The culturally skilled restorative justice practitioner is aware of his or her own values and biases.
- The culturally skilled restorative justice practitioner is comfortable with differences that exist between himself or herself and clients in terms of race and beliefs.
- The culturally skilled restorative justice practitioner is sensitive to circumstances (personal biases, ethnic identity, sociopolitical influences, etc.) that may dictate referral of a minority client to a member of his or her own race/culture or to another practitioner.
- The culturally skilled restorative justice practitioner acknowledges and is aware of his or her own racist attitudes, beliefs, and feelings.

Despite awareness of the consequences of cross-cultural misunderstandings, such as subtle snubs and miscommunications or explicit prejudicial actions, it is difficult to remove all such misunderstandings and consequences. These attempts to identify the pitfalls and dangers of cross-cultural differences that impinge upon restorative justice efforts may serve at best only to reduce the probability of future conflict or disrepair. In human interaction, even where awareness of potential problems is increased and behavior modified, matters may still go awry. For example, in situations in which the antagonists are embittered by age-old conflicts passed on from generation to generation, short-term efforts at understanding and amelioration will likely succumb to such insurmountable odds. Such extreme cases, however, should not deter the need to learn, to inform, to model, and to seek supportive roles in helping others restore themselves to more harmonious relationships.

It is crucial for those who work in the justice field to take every step possible to reduce the likelihood of bias and discrimination. The following is a list of suggested steps, not meant to be exhaustive. Each reader should add freely to the list.

Know Thyself

Mediators need to reflect upon and study their own behaviors and communication styles. They should ask themselves the following questions: Am I comfortable with silence? Do I interrupt frequently? Can I stand closer to someone or farther away than I usually do when speaking? Can I do this comfortably? Do I overinterpret straying eye contact? Can I talk to someone without staring him or her directly in the eye if it appears to be offensive? Do I carry embedded, learned prejudices toward persons of different skin color than my own or toward

persons of the same skin color but who are less educated or better educated than myself? Do I expect persons who live in certain parts of the city to be law violators?

Keeping a journal of mediation sessions to record speech patterns of all participants might improve mediation results. The mediator should record incidents that make the participants and/or mediator uncomfortable and comfortable, use of and response to gestures and intensity of conversation, and an overall assessment of the extent to which clear communication was achieved. Through use of such journals, mediators can note if their communication patterns vary over time depending on whether they are speaking with someone of their own culture or of a different culture.

Mediators might consider taking pencil and paper inventories designed to identify biases of which they may be unaware. Bias, or having likes and dislikes, is part of human nature and will likely always be so. Some people like rock and roll music, some like blues, some like rap, some like classical, some like country, and so on. Having biases is not the problem per se (Duryea, 1994). The problem develops when bias, intentionally or unintentionally, leads to discriminatory practices. Mediators must discover their own biases so they do not wind up hurting others or themselves.

Get To Know the Participants

Do not make quick assumptions about others. It is difficult, if not impossible, to fully know another person. A tatter-clad young woman with bright pink spiked hair shows up for a mediation session to meet with an elderly conservatively dressed couple about theft of property from an unlocked car. Does the mediator think, "Oh no, why didn't I stay home today?" Or does the mediator assume that he or she can help these people, who appear very different and who have already experienced conflict due to the stolen property? The mediator must find some common ground from which to communicate so that understanding, restitution, and some degree of justice can be achieved for the victims.

If the mediator takes this case without meeting with the participants previously, he or she might be surprised by any number of possibilities. The young woman may be quite cooperative. After all, she is likely aware of how her appearance may affect others. Perhaps it is the elderly woman who is turned off by someone of her gender "dressing so radically." Or perhaps the elderly man finds the young woman attractive and flirts with her. Or perhaps the mediation progresses quite smoothly (it does happen occasionally). In any case, to make assumptions based on appearances without any previous information or contact with the participants will likely result in stereotypical assessments and outcomes, leaving many to wonder about the principles of justice guiding such experiences.

Look at the world through the eyes of another. Every participant is unique. Cultural influences may be quite evident, yet each individual will reflect cultural heritage somewhat differently. Mediators must understand each client as an individual within the context of culture (Ridley, 1995). If mediators are going to work with clients within a restorative justice framework, then they will need to take the time to meet with the clients, listen to them, and learn how they see their world. What meaning did the burglary have for the single mom: loss of mementos, invasion of privacy, erosion of her sense of community, awakening of fear, and so on? How does she view the

offender: as vermin, as someone gone astray, as someone with potential? What is her concept of justice: getting a "pound of flesh" from the offender, having her possessions returned or replaced, seeing the offender make restitution to the community, helping the offender so future criminal acts are less likely?

Similar questions can be asked of the offender: What is his or her view of the victim, level of remorse, sense of justice, motivation to change, willingness to repair the community fabric harmed by his or her actions, assignment of blame or responsibility for actions?

Likewise, if other community members will be involved, such as in circle sentencing, mediators will want to know how these persons see themselves vis-à-vis the victim and the offender, their conceptions of justice and restoration, and their willingness to accept or reject possible resolutions to the conflict that has involved individuals and the community as a whole.

Mediators will also want to pay attention to communication styles. Does the victim speak slowly and haltingly, taking time to form thoughts and sentences? Does the offender speak in staccato fashion using few words? Does the elder speak in story forms, letting each listener discern his meaning? Does the offender avoid eye contact? If so, is this a sign of shame, or is it characteristic of his or her culture to defer to persons of authority by not looking at them directly? (Often mediators are perceived by many as authority figures.) Will the participants be comfortable sitting around a table or more willing to communicate if only open space separates them? Does the fact that the victim speaks loudly, seems to shout at times, mean that she's angry or hard of hearing or is this a communication style representative of her culture (or a combination of these factors)? Will such loudness intimidate other participants?

In human interactions in which the stakes are as high as they are when matters of justice are being decided, mediators must know the key participants so the process leading toward a just resolution is not derailed by what may initially appear to be incompatible points of view and communication styles. To gain such knowledge requires spending ample time with each participant, asking appropriate questions, listening thoroughly, and adapting one's communication style to that which is encountered. For example, if silence is a significant part of speaking for the victim, mediators need to slow down to accommodate that silence.

How mediators can help persons repair relationships or restore a sense of justice is based on their understanding of and sensitivity to the participants' points of view and their culturally learned ways of communicating, verbal and nonverbal. To gain awareness and sensitivity, time and energy are required. As with so many other processes, the desired result—in this instance a sense of restoration—begins with preparation. A restored sense of justice is enhanced by interacting well with both the offender and the victim. After all, one of the tenets of restorative justice is the humanizing of the justice system. In these programs, mediators represent the justice system to a large extent. Therefore, their actions not only shape and influence specific outcomes but can promote participants' sense of the system being responsive, considerate, fair, and just.

Listen to key informants. It is often helpful for mediators to nurture relationships with individuals in a community or culture unfamiliar to them to examine how persons work out conflicts and communicate with one another in that

particular community or culture. This has been a common practice of cultural anthropologists and sociologists involved in qualitative field studies. Key informants can provide information that may prevent mediators from making foolish errors and causing damaging injury. These key informants are often not members of the professional justice community. They may include the Black mother who manages an informal delinquency prevention agency out of her apartment; the Asian elder who wants to help his grandchildren make their way in the larger culture while appreciating and holding on to traditional ways; the Latino teenager who is curious about the mediator's presence and is at least willing to test the mediator's sincerity.

One advantage mediators have with these persons is knowing that each individual has stories to share. Very few persons take the time to listen to others' stories. Willingness to listen to another person's story initiates a bond, although genuine respectful listening does not always forge total trust.

Although key informants provide a potential wealth of information on cultural values and mores, they may at times be so ingrained in their culture that they are unable to step back and see, and therefore share, how values are actually shaped and imposed or how the nuances of communication styles play out in day-to-day living. Still, these persons offer considerable potential as information resources.

Prepare the Participants

Much of the work involved in bringing persons together to discuss issues of conflict needs to be done before the encounter happens. Communication difficulties that might arise during mediation can be avoided if the mediator's preparation includes learning about the cultural differences of the participants.

A fruitful mediation requires anticipating possible problems. For example, the mediator may need to help participants understand each other's viewpoints and different communication styles prior to the mediation session. Encouraging cultural sensitivity may have little impact, but it may make a difference. At least the mediator is providing some information to help prepare participants for the encounter, which may include what they would normally regard as insulting or disrespectful behaviors. Also, participants might be inspired to examine their own biases and mannerisms and thereby curb some behaviors during the mediation that might be interpreted as offensive by others.

This last statement may be overly optimistic—to expect persons to increase their awareness of how others speak and behave and to change their own behaviors accordingly, particularly in situations that might become tense and conflictive. However, any increased awareness of or sensitivity to other cultural values or communication styles gained by working with the participants prior to mediation makes the time spent worthwhile; any positive change on the part of participants' behavior is an added bonus.

To illustrate some possibilities of preparing the participants to be aware of how others may think and speak, return to the brief opening scenario involving a Black male store owner, an American-Indian female shoplifter, and a White male mediator. In that example, the mediator had not prepared himself or the others. If the mediator had prepared the participants, the scenario may have unfolded in the manner revealed below.

The mediator meets with the Black store owner and learns of the store owner's feeling of invasion and loss. He knows

that the store owner wants to work with the teen so that there is no more shoplifting but does not want to see her dealt with harshly. The store owner volunteers that he grew up on the streets and knows how difficult it is. His casual conversation is punctuated by gestures. His voice booms, particularly as he speaks of how the system generally rips off youth and people of color. The man wants his economic loss recovered and the girl to be helped. Essentially, he is quite sympathetic to meeting with the teenager for his benefit as well as hers or he wouldn't take the time out of his busy schedule to do so.

When the mediator meets with the Ute teenager, he discovers a very different way of communicating. She is quiet, which makes the mediator uncomfortable. She answers only direct questions. She pauses between her sentences. Sometimes the mediator thinks she is done speaking when she adds still another thought. Rarely does she make eye contact with him. When he leaves the young woman, the mediator feels perplexed and not yet ready for these two participants to meet.

Through a mutual friend, the mediator is introduced to an elder of the teen's band. The mediator asks questions and listens, seldom to direct answers, but he gets the information he needs. The mediator comes to understand that the girl was not being surly or uncooperative. She was showing him signs of respect by not looking him in the eye. She did not ask questions because such an insult would have suggested that he had not been thorough in his work with her. The teen's slow speech pattern was quite consistent with her upbringing and culture. The silences demonstrated how important it was to her to answer his questions as well as she could.

With a better understanding of both participants, the mediator is ready to proceed. He returns to each participant individually. With the girl, he shares how the Black store owner can be perceived as intimidating and impatient. The man will speak rapidly to the teen and seek to make direct eye contact, and he will probably raise his voice, but the mediator assures the teen that the store owner is not showing anger with her or being disrespectful. This is his way of conversing about things important to him. The mediator informs the girl not to expect the store owner to change his ways but encourages her to listen to the content of what the man says rather than to focus on the mannerisms and style, which might make her want to recoil.

With the Black store owner, the mediator talks of how the Ute girl will not look the store owner in the eye. He explains that interpreting her lack of eye contact as weakness, disinterest, or rebellion would be incorrect. In her culture, it is a sign of respect not to challenge authority. Certainly she views the man whose store she violated as being in a position of authority. He encourages the store owner to refrain from interrupting the girl until she has worked through her thoughts and spoken her mind. Again, he says that the slowness of speech does not indicate a learning disability or any other weakness but simply reflects the speech patterns of her culture.

As the mediator moves between the victim and the offender, he has also been working on his own awareness of how cross-cultural differences may affect his efforts to work with these two. With new information, he is also exploring his own reactions: his initial discomfort with the Black man's perceived abrasiveness, with the Ute teen's excessive meekness and apparent inability to articulate, and with

his concern about his own ability to work with two people so diametrically opposed in style, if not world view.

Relieved and enlightened by his preparation, the mediator is now ready to bring the two participants together. Having done his homework, he is comfortable and better prepared for the usual unpredictable directions that such encounters take. He is hopeful that positive resolution will be agreed upon between persons who may have very little in common other than being on opposing sides of a conflict.

VI. Conclusion

To repair or restore relationships, personal or communal, that have been damaged by criminal or delinquent acts is a challenging goal in any circumstances. When participants in this process, including victims, offenders, and program staff, are of differing cultures, typical patterns of communicating and expressing values can lead to confusion if not complete disruption of the process. To arrive at justice, the views of all parties need to be considered. The likelihood of repair and restoration of relationships is increased by the extent to which differences in communication styles and world views of the participating individuals are examined and understood. It is hoped not only that restorative justice programs will be enhanced by such awareness and sensitivity to cultural differences but also that openness to diversity will enrich the lives of all who choose to participate.

Appendix A. The Case of a Community Reparation Board Meeting[2]

This meeting is held in a small room in a local social services agency. Three board representatives sit in a row facing the youthful offender. The youth's mother sits behind and to the right of her son. The board representatives include Ms. Langdon, a Black woman in her midthirties who is an advertising agency executive; Mr. James, a retired White police officer; and Mrs. Perez, a Latino mother of four in her fifties who has worked as a waitress most of her life.

The offender, Enrico Gonzales, is Latino, 14, and a gang member. His mother, Ms. Gonzales, is a Latino single mother in her early thirties who works as a hotel maid. She has two other children. Enrico is before the board as a result of a gang-related break-in and burglary at the Clark Street Convenience Store. He was adjudicated for breaking and entering and for stealing goods valued at $350. The board members have concerns for the young Black Henderson family, who live above the store and felt invaded and were terrified by what might have happened when the burglary took place below them. Neither the store owner nor the Henderson family is present at this meeting, which is not part of the adjudication process.

Mr. James begins by explaining to Enrico what the board is expected to do. "You have already been convicted of stealing $350 from the Clark Street Store. Because of your age and your mother's pleading, the court has referred you to us to come up with an appropriate punishment rather than send you to the training school. You know what the training school is?"

"Yeah," Enrico nodded.

"Well, you're a lucky young man. Now then, how are you gonna pay back the $350?"

The boy shrugged, "Don't know?"

"You got a job?"

"Sometimes."

"Sometimes? What the hell does that mean?" Mr. James demanded.

Rather than respond, Enrico's glance shifted to the floor.

Motioning for Mr. James to remain quiet, Ms. Langdon asked. "What do you do when you work sometimes?"

"Sweep floors for the meat market."

"Ah, the Greyson Meat Market?"

Enrico nodded.

"How much do you make an hour?"

"Maybe $3."

---

[2] This account is fictional.

"How many hours do you work a week?"

"Sometimes 10. Sometimes more or less."

"Then you do have some income," Mr. James noted directly.

"Enrico, how do you use that money now?" asked Mrs. Perez.

"Buy some things."

"What kind of things?"

Enrico slumped further in the chair and answered without making eye contact. "Food. Maybe a tape. Things."

Noticing the pleading eyes of Enrico's mother, Mrs. Perez directed her next question to her. "Is that about right, Ms. Gonzales?"

"Yes, but the food is food for the family. He keeps very little of what he earns for himself. He gives the money to me and I give him a couple dollars a week for himself. Enrico is a good boy."

"Well that may be, but he is going to have to pay back the value of the goods he stole," Ms. Langdon interjected rapidly.

"He's already getting a big break," added Mr. James, arms crossed. "We can't let him get off scot-free just because you don't make enough money to feed your family."

Wearily, Ms. Gonzales looked to Mrs. Perez for help.

"You will need to work out with Enrico a way for him to pay back the grocer," Mrs. Perez said. "We don't want to put your family in jeopardy, but your son has committed a crime and has to make things right. I've raised four children myself. We parents have to take some responsibility for our young. You can't just let him hang out with a gang or he will go bad for sure."

"The money is just money. Isn't anybody concerned about that young Black family living over the store? They were terrorized." Pointing at Enrico, Ms. Langdon asked, "What are you going to do for them, young man?"

"Huh," Enrico grunted blankly.

"You don't give a damn about them, do you?" her voice rose sharply. "They're Blacks living in a Latino neighborhood. I don't know why they chose to live there, but they got rights to their safety."

"Enrico," began Mrs. Perez, "Would you be willing to meet with that couple, if they would be willing to meet with you? There would be another person present to make sure everything was safe and so on."

"Why would I do that?"

"Maybe they need to know that you didn't want to hurt them. Maybe you need to see them to know that you did more wrong that night than steal some things off a shelf. Maybe they need to see you. That you're a real person and not some TV hood."

Enrico grinned a half smile, "Okay. If you think it would help."

(During this meeting a restitution plan for the store owner was worked out and a potential meeting with the young family living above the store was arranged. The board also agreed to look into finding services to help Enrico and his family.)

To review this case from a cross-cultural perspective, consider the following questions

- How did cultural awareness or unawareness of communication styles shape the interactions and likely outcomes of this meeting?
- Do you think racism played a part in this case? Provide possible examples.
- What would you do differently to build upon the cultural diversity within the room?
- How might you have coaxed Enrico to be a more active participant in this meeting?

Appendix B. Diversity[3]

I believe that diversity is a part of the natural order
of things—as natural as the trillion shapes and shades
of the flowers of spring or the leaves of autumn.

I believe that diversity brings new solutions to an
ever-changing environment, and that sameness
is not only uninteresting but limiting.

To deny diversity is to deny life—with all its richness
and manifold opportunities. Thus I affirm my citizenship
in a world of diversity, and with it the responsibility to . . .

Be tolerant. Live and let live. Understand that
those who cause no harm should not be feared,
ridiculed, or harmed—even if they are different.

Look for the best in others.

Be just in my dealings with poor and rich,
weak and strong, and whenever possible to
defend the young, the old, the frail, the defenseless.

Be kind, remembering how fragile the human spirit is.

Live the examined life, subjecting my motives
and actions to the scrutiny of mind and heart
So to rise above prejudice and hatred. Care.

[3] An unpublished poem by Gene Griessman.

Bibliography

Bazemore, G., and C.T. Griffiths. (1997) "Conferences, Circles, Boards, and Mediations: The 'New Wave' of Community Justice Decisionmaking." *Federal Probation* 61(2): 25–37.

Bazemore, G., and K. Pranis. (1997) "Hazards Along the Way: Practitioners Should Stay True to the Principles Behind Restorative Justice." *Corrections Today* 59(7): 84–128.

Duryea, M.L. (1994) *Conflict Analysis & Resolution as Education.* Victoria, British Columbia, Canada: UVIC Institute for Dispute Resolution.

Myers, S., and B. Filner. (1993) *Mediation Across Cultures.* San Diego, CA: Myers and Filner.

Ridley, C.R. (1995) *Overcoming Unintentional Racism in Counseling and Therapy.* Thousand Oaks, CA: Sage Publications.

Sue, D.W., and D. Sue. (1990) *Counseling the Culturally Different,* Second Edition. New York, NY: John Wiley & Sons.

Umbreit, M.S. (1997a) "Humanistic Mediation: A Transformative Journey of Peacemaking." *Mediation Quarterly* 14(3): 201–213.

Umbreit, M.S. (1997b) *The Impact of Restorative Justice.* St. Paul, MN: Center for Restorative Justice & Mediation.

Umbreit, M.S. (1995) *Mediating Interpersonal Conflicts: A Pathway to Peace.* West Concord, MN: CPI Publications.

Van Ness, D.W. (1997) "Perspectives on Achieving Satisfying Justice: Values and Principles of Restorative Justice." *The ICCA Journal on Community Corrections* 7(1): 7–12.

Zehr, H. (1997) "Restorative Justice: The Concept." *Corrections Today* 59(7): 68–70.

Zehr, H., and H. Mika. (1997) *Fundamental Concepts of Restorative Justice.* Akron, PA: Mennonite Central Committee.

FEB 25 2002

OVC

Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers

For copies of this document and/or additional information, please contact:

Office for Victims of Crime Resource Center (OVCRC)
P.O. Box 6000
Rockville, MD 20849–6000
Telephone: 1–800–627–6872 or 301–519–5500

E-mail orders for print publications to *puborder@ncjrs.org*
E-mail questions to *askovc@ncjrs.org*
Send your feedback on this service to *tellncjrs@ncjrs.org*

Refer to publication number: **NCJ 176348**

NCJ 176348